

FILED

JAN 27 2016

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY A. Nowlin DEPUTYUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISIONUNITED STATES OF AMERICA,
Plaintiff,

v.

VASCULAR SOLUTIONS, INC., (1) and,
HOWARD ROOT, (2)
Defendants.§
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Case No. SA-14-CR-926-RCL

ORDER

Having considered defendants Vascular Solutions, Inc. and Howard Root's Motion [163] in limine to exclude allegations and evidence of uncharged bad acts, the opposition [181] and reply [188] thereto, and the record herein, defendants' Motion [163] is **DENIED**. It is further

ORDERED that that the government may rely on evidence and argument that the defendants concealed the RELIEVE clinical trial patient safety data from doctors since such evidence can show motive and intent for purposes of the conspiracy Count. Concealing that 14% of the patients in the clinical trial developed deep vein thrombosis tends to show that the defendants' off-label promotion was misleading and false, and therefore not solely truthful and not First Amendment protected. Defendants can argue, of course, that the clinical trial was a success and raised no safety concerns, as they are expected to do. The government, however, is free to argue that the promotional activities were false and misleading as a result of the clinical trial. Resolution of that question is for the jury. The Court does not agree that this evidence is inflammatory or unduly prejudicial in any sense under a Rule 404/403 balancing.

It is **SO ORDERED**.Dated: 1/27/16

Royce C. Lamberth
ROYCE C. LAMBERTH
United States District Judge